

Appellant, James C. McArdle, was arrested by the Phoenix Police for several DUI offenses on September 12, 2002 following a traffic accident involving the victim, Olivia

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2004-000268-001 DT

10/21/2004

Jacobson. At the time of the accident, Ms. Jacobson walked to Appellant's corvette and pulled the keys out of the ignition and accused him of trying to kill her by his poor driving. After speaking to the police and fireman who responded to the scene, the Phoenix Police asked Ms. Jacobson to formally identify the Appellant. Within 15 to 20 minutes of the accident, they accompanied her back to the scene, and she identified Appellant as the driver of the corvette that had caused the accident. Ms. Jacobson's identification of the Appellant was not equivocal; it was a certain identification. Ms. Jacobson had significant reasons for recalling her encounters with the Appellant and the accident that he had caused.

The identification of Appellant was an issue raised by Appellant in a motion to suppress the identification. The trial court held an identification hearing pursuant to State v. Dessureault.<sup>1</sup> At the hearing, Appellant's counsel acknowledged having the burden of going forward, and called Ms. Jacobson to testify. Following Ms. Jacobson's testimony, the court determined that Appellant had failed to make any showing that there was anything unduly suggestive about the "one-on-one" identification that occurred at the scene of the accident. The trial judge (the Honorable Malcolm Strohsen, Phoenix City Court Judge) denied Appellant's motion without further testimony or evidence.

On appeal, Appellant contends that the trial court erred in summarily denying Appellant's Motion to Suppress the Identification, for the reason that Appellant had allegedly failed to make a *prima facie* case that the identification should be suppressed.

The issues presented in this case involve mixed questions of law and fact. This Court will review the factual findings (and the court's implied factual findings) for an abuse of discretion.<sup>2</sup> Only when a trial court's factual findings, or inferences drawn from those findings, are not justified or clearly are against reason and the evidence, will an abuse of discretion be established.<sup>3</sup> This Court must review *de novo* the ultimate question whether Appellant met his burden of showing a *prima facie* violation of a constitutional right.<sup>4</sup>

Rule 16.2(b), Arizona Rules of Criminal Procedure, provides in part:

(W)henever the defense is entitled under Rule 15 to discover the circumstances surrounding the taking of any evidence by confession, identification or search and seizure...the prosecutor's burden of proof shall arise only after the defendant has come forward with evidence of specific circumstances which establish a *prima facie* case that the evidence taken should be suppressed.

---

<sup>1</sup> 104 Ariz. 280, 453 P.2d 951 (1969).

<sup>2</sup> State v. Rogers, 196 Ariz. 508, 924 P.2d 1027 (1996).

<sup>3</sup> State v. Chapple, 135 Ariz. 281, 660 P.2d 1208 (1983).

<sup>4</sup> See State v. Gonzalez-Gutierrez, 187 Ariz. 116, 927 P.2d 776 (App. 1996).

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2004-000268-001 DT

10/21/2004

Appellant argues that one-man show-ups are inherently suggestive identification procedures, and that the fact that a one-man show-up occurred in this case satisfies Appellant's burden of showing a *prima facie* constitutional violation. However, the testimony of Ms. Jacobson in this case went far beyond informing the trial judge that a one-man show-up identification had occurred. Ms. Jacobson also testified about such other issues as her opportunity to observe Appellant, her degree of attention (and her anger at Appellant), the accuracy of her previous description to the police, her level of certainty, and the short period of time between the accident and the one-on-one identification that occurred thereafter. All of these factors have been identified by the United States Supreme Court and approved by the Arizona Supreme Court as relevant factors to determine whether an out-of-court identification is reliable.<sup>5</sup>

It is clear from the record that the trial court concluded from the testimony of Ms. Jacobson that her identification of Appellant was reliable. Given the reliability of the identification itself, no further evidence was necessary. Clearly, the trial judge believed that Appellant had failed to prove a *prima facie* case that a constitutional violation had occurred. This Court determines that sufficient facts support the trial judge's ruling, and that as a matter of law the identification was reliable.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed in this case.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

/ s / HONORABLE MICHAEL D. JONES

---

JUDICIAL OFFICER OF THE SUPERIOR COURT

---

<sup>5</sup> See, Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375, \_\_\_\_\_ L.Ed.2d. \_\_\_\_\_ (1972), and State v. Castenada, 150 Ariz. 382, 724 P.2d 1 (1986).